Subchapter Eight: Cable System, Open Video, Telecommunications and Franchises

4.08.010 Short Title.

This Ordinance shall constitute the Cable System, Open Video, Telecommunications and Franchises@ of the Town of Colma and may be referred to as such.

[*History*: The original Subchapter 4.08 was enacted by ORD. 440, 6/10/92; Ord. 549 3/10/99; original Subchapter 4.08 was repealed and the present subchapter adopted.

4.08.020 Purpose and Intent.

It is the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public and any Franchises issued pursuant to this Chapter shall be deemed to include this as an integral finding thereof. It is the further intent of this Chapter to establish regulatory provisions that permit the City to regulate Cable System Franchises and Open Video Systems and Telecommunications networks providing cable service, to the extent permitted by federal and state law, including but not limited to the Federal Cable Communications Policy Act of 1984, the Federal Cable Television Consumer Protection and Competition Act of 1992, the Federal Telecommunications Act of 1996, applicable Federal Communications Commission regulations and applicable California law.

[*History*: ORD. 549, 3/10/99]

4.08.030 Authority.

Pursuant to applicable federal and state law, the Town of Colma is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct Cable Systems within the City limits. Further, the City has the authority to set forth requirements for the provision of cable services through use of Open Video Systems(OVS) and telecommunications networks.

[*History*: ORD. 549, 3/10/99]

4.08.040 Findings.

The City Council finds that the development of Cable Systems has the potential of having great benefit and impact upon the residents of the City. Because of the complex and rapidly changing technology associated with Cable Systems, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such Persons as the City may designate. It is the intent of this Ordinance and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public and any Franchises issued pursuant to this Ordinance shall be deemed to include this as an integral finding thereof. It is the further intent of this Ordinance to establish regulatory provisions that permit the City to regulate Cable System Franchises and Open Video Systems and telecommunications networks providing cable

service, to the extent permitted by Federal and State law, including but not limited to the Federal Cable Communications Policy Act of 1984, the Federal Cable Television Consumer Protection and Competition Act of 1992, the Federal Telecommunications Act of 1996, applicable Federal Communications Commission regulations and applicable California law.

[*History*: ORD. 549, 3/10/99]

4.08.050 Definitions.

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. Words not defined shall be given their common and ordinary meaning.

(a) *Basic Cable Service* means any service tier which includes the retransmission of local television broadcast signals.

(b) *Cable Service* means:

(1) The one-way transmission to Subscribers of

(A) video programming; or

(B) other programming service; and

(2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(c) *Cable System* or *System* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include:

(1) a facility that serves only to retransmit television signals of one (1) or more television broadcast stations;

(2) a facility that serves Subscribers without using any Public Rights-of-Way;

(3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility shall be considered a Cable System (other than for the purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers; unless the extent of such use is solely to provide interactive on-demand services; or

(4) any facilities of any electric utility used solely for operating its electric utility system.

(d) *Cable Operator* means any Person or group of Persons who:

(1) provides Cable Service over a Cable System and directly or through one (1) or more affiliates owns a significant interest in such Cable System; or

(2) otherwise controls or is responsible for, through any arrangement, the management and operation of such Cable System.

(e) *Channel* or *Cable Channel* means a portion of the electromagnetic frequency spectrum which is used in a Cable System which is capable of delivering a television channel as defined by the Federal Communications Commission.

(f) *Council* means the City Council of the Town of Colma.

(g) *Franchise* means an initial authorization, or renewal thereof, issued by the Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System. Any such authorization, in whatever form granted, shall not supersede the requirement to obtain any other license or permit required for the privilege of transacting business within the City as required by the other ordinances and laws of the City.

(h) *Franchise Agreement* means a franchise grant ordinance or a contractual agreement, containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.

(i) *Franchise Fee* means any fee or assessment of any kind imposed by the City on a Grantee as compensation for the Grantee's use of the Public Rights-of-Way for the provision of cable service. The term AFranchise Fee@ does not include:

(1) any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable Subscribers);

(2) capital costs which are required by the Franchise to be incurred by Grantee for Public, Educational, or Governmental Access Facilities;

(3) requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(4) any fee imposed under Title 17, United States Code.

(j) *Grantee* means any Person receiving a Franchise pursuant to this Ordinance and under the granting Franchise ordinance or agreement, and its lawful successor, transferee or assignee.

(k) *Grantor* or *City* means the Town of Colma as represented by the Council or any delegate, acting within the scope of its jurisdiction.

(l) *Gross Annual Revenues* means the annual gross revenues received by a Grantee from the operations of the Cable System within the City utilizing the Public Rights-of-Way for which a Franchise is required in order to provide Cable Service, excluding refundable deposits, rebates or credits, and any sales, excise or other taxes or charges collected for direct pass-through to local, State or Federal government.

(m) *Inferior Signal Quality* means any signal that does not meet FCC technical standards.

(n) *Installation* means the connection of the System to Subscribers' terminals, and the provision of service.

(o) *Open Video System* means a certified video programming system meeting all conditions of Sec. 653(b) of the Telecommunications Act of 1996, providing cable service to subscribers with the Town of Colma.

(p) *Person.* [See, section 1.01.100]

(q) *Public, Educational or Government Access Facilities* or *PEG Access Facilities* means the total of the following:

(1) channel capacity designated for noncommercial public, educational, or government use; and

(2) facilities and equipment for the use of such channel capacity.

(r) *Section* means any section, subsection or provision of this Ordinance.

(s) *Service Area* or *Franchise Area* means the entire geographic area within the municipal boundaries of the City as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise.

(t) *Service Tier* means a category of Cable Service or other services provided by a Cable Operator and for which a separate rate is charged.

(u) *State* means the State of California.

(v) *Street* or *Public Way* or *Public Rights-of-Way* means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under

public authority or by others and located within the Service Area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property.

(w) *Subscriber* or *Customer* or *Consumer* means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by the Grantee by means of or in connection with the Cable System, and who pays the charges therefore.

[*History*: ORD. 549, 3/10/99; ORD. 643, 4/12/06]

4.08.060 Franchise Terms and Conditions.

A Franchise granted by the City under the provisions of this Ordinance shall encompass the following purposes:

(a) To engage in the business of providing Cable Service, and such other services as may be permitted by law, which Grantee chooses to provide to Subscribers within the designated Service Area.

(b) To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the Cable System in, on, over, under, upon, along and across streets or other public places within the designated Service Area.

(c) To maintain and operate said Franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of Cable Services, and such other services as may be permitted by law.

(d) To set forth the obligations of a Grantee under the Franchise.

[*History*: formerly § 4.08.100; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.070 Franchise Required.

It shall be unlawful for any Person to construct, install or operate a Cable System in the City within any Public Way without a properly granted Franchise awarded pursuant to the provisions of this Ordinance.

[*History*: formerly § 4.08110; ORD. 549, 3/10/99 ORD. 638, 12/14/05]

4.08.080 Term of Franchise.

A Franchise granted hereunder shall be for a term established in the Franchise Agreement, commencing on the Grantor's adoption of an ordinance or resolution authorizing the Franchise. A Franchise granted hereunder may be renewed upon application by the Grantee pursuant to the provisions of applicable State and Federal law.

[*History*: formerly § 4.08120; ORD. 549, 3/10/99 ORD. 638, 12/14/05]

4.08.090 Franchise Territory.

Any Franchise shall be valid within all the municipal limits of the City, and within any area added to the City during the term of the Franchise, unless otherwise specified in the Franchise Agreement. In connection with the issuance of any franchise under this chapter, the city council may impose such reasonable restrictions, conditions and limitations as to the area or areas of the city to be served by such franchise holder.

[*History*: formerly § 4.08130; ORD. 549, 3/10/99 ORD. 638, 12/14/05]

4.08.100 Federal or State Jurisdiction.

This Ordinance shall be construed in a manner consistent with all applicable Federal and State laws, and shall apply to all Franchises granted or renewed after the effective date of this Ordinance to the extent permitted by applicable law.

[*History*: formerly § 4.08.140; ORD. 549, 3/10/99 ORD. 638, 12/14/05]

4.08.110 Franchise Non-Transferable.

(a) Grantee shall not sell, transfer, lease, assign or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the Franchise or any of the rights or privileges therein granted, without the prior consent of the Council, which consent shall not be unreasonably denied, withheld or delayed; provided, however, that the prior consent of the Council shall not be required for an intra-corporate or intra-company transfer from one wholly-owned subsidiary to another wholly-owned subsidiary. Any attempt to sell, transfer, lease, assign or otherwise dispose of the Franchise without the consent of the Council shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation or by assignment of any right, title or interest in the Cable System in order to secure indebtedness shall not be considered a transfer for the purposes of this section.

(b) The requirements set forth in the preceding paragraph shall apply to any change in control of Grantee. The word Acontrol@ as used herein includes majority ownership, and actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior consent of the Council shall be required where ownership or control of more than twenty-five percent (25%) of the voting stock of the Grantee is acquired by a Person or group of Persons acting in concert, none of whom own or control the voting stock of the Grantee as of the effective date of the Franchise, singularly or collectively.

(c) Grantee shall notify Grantor in writing of any foreclosure or any other judicial sale of all or a substantial part of the Franchise property of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said Franchise property. Such notification shall be considered by Grantor as notice that a change in control of ownership of the Franchise

has taken place and the provisions under this Section governing the consent of Grantor to such change in control of ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist Grantor in such inquiry. In seeking Grantor's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that the Grantee and/or the proposed transferee complete an application in accordance with Federal Communications Commission Form 394 or equivalent. An application shall be submitted to Grantor not less than one hundred twenty (120) days prior to the proposed date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the System and comply with all Franchise requirements for the remainder of the term of the Franchise. If the legal, financial and technical qualifications of the applicant are satisfactory, the Grantor shall consent to the transfer of the Franchise. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, Grantor's consent to such transfer shall be deemed given. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(e) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the Franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the Cable System, in the event of a Grantee default of its financial obligations. Further, said financial institution shall also agree in writing to continue Cable Service and comply with all Franchise requirements during the term the financial institution exercises control over the System.

(f) Upon transfer, Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with the transfer of the Franchise, including without limitation, costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses. These costs shall be subject to any limitations set forth in the franchise agreement. Any such reimbursement shall not be charged against or included as part of any Franchise Fee due to Grantor during the term of the Franchise.

[*History*: formerly § 4.08.150; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.120 Geographical Coverage.

(a) Grantee shall design, construct and maintain the Cable System to have the capability to pass every residential dwelling unit in the Service Area, subject to any Service Area line extension requirements of the Franchise Agreement.

(b) After service has been established by activating trunk and/or distribution cables for any Service Area, Grantee shall provide uniform service to any requesting Subscriber within that

Service Area within thirty (30) days from the date of request, provided that the Grantee is able to secure all rights-of-way necessary to extend service to such Subscriber within such thirty (30) day period on reasonable terms and conditions.

[*History*: formerly § 4.08.160; ORD. 549, 3/10/99 ORD. 638, 12/14/05]

4.08.130 Franchise Non-exclusive.

Any Franchise granted pursuant to this Ordinance shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional Franchises for a Cable System, as it deems appropriate, subject to applicable State and Federal law, provided that if the Grantor grants an additional Franchise on terms more favorable to the second Grantee (whether by the grant of greater benefits or the imposition of lesser obligations), or if another entity utilizing the Public Rights-of-Way offers service competitive with Grantee, then the material provisions of any such additional Franchise shall be reasonably comparable to the terms and conditions contained in the initial Grantee's Franchise, so that all Grantees are accorded competitively neutral and nondiscriminatory treatment and to provide all parties equal protection under the law.

[*History*: formerly § 4.08.170; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.140 Multiple Franchises.

(a) Grantor may grant any number of Franchises subject to applicable State or Federal law. Grantor may limit the number of Franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

(1) The capacity of the Public Rights-of-Way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility Systems, such as electrical power, telephone, gas and sewer.

(2) The benefits that may accrue to Subscribers as a result of Cable System competition, such as lower rates and improved service.

(3) The disadvantages that may result from Cable System competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the Public Rights-of-Way.

(b) Where electric and telephone utilities are to be placed underground in any new residential housing developments, Grantor and the developer of such new residential housing shall give each Grantee serving the Franchise Area within which the new residential housing development is located at least seventy two (72) hours prior written notice of the date on which open trenching will be available for the Grantee's installation of conduit, pedestals and vaults. On request of the Grantor or developer, the Grantee shall provide specifications needed for trenching. Developers of new residential housing with underground utilities shall provide

conduit to accommodate cables for at least two (2) new entrant Cable Systems and dedicate the use of such conduit to the City.

(c) Grantor may require that any new entrant, non-incumbent Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the Public Rights-of-Way in any particular area cannot feasiblely and reasonably accommodate additional cables.

[*History*: formerly § 4.08.180; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.150 Franchise Applications - Filing.

Any Person desiring an initial Franchise for a Cable System shall file an application with the City. A reasonable nonrefundable initial application fee established by the City shall accompany the initial Franchise application to cover all validly documented reasonable costs associated with processing and reviewing the application, including without limitation costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such validly documented reasonable costs exceed the application fee, the selected applicant(s) shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs.

[*History*: formerly § 4.08.200; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.160 Franchise Applications - Contents.

An application for an initial Franchise for a Cable System shall contain, where applicable:

(a) A statement as to the proposed Franchise and Service Area;

(b) Resume of prior history of applicant, including the expertise of applicant in the cable television field;

(c) List of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation;

(d) List of officers, directors and managing employees of applicant, together with a description of the background of each such Person;

(e) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant;

(f) A current financial statement of applicant verified by a Certified Public Accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;

(g) Proposed construction and service schedule;

(h) Any reasonable relevant additional information that the City deems applicable.

[*History*: formerly § 4.08.210; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.170 Franchise Applications - Consideration.

(a) Upon receipt of any application for an initial Franchise, the City Manager or a delegate shall prepare a report and make recommendations respecting such application to the Council.

(b) A public hearing shall be set prior to any initial Franchise grant, at a time and date approved by the Council. Within thirty (30) days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the initial Franchise(s) should be granted, and, if granted, subject to what conditions. The Council may grant one (1) or more Franchises, or may decline to grant any Franchise.

[*History*: formerly § 4.08.220; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.180 Franchise Renewal.

Franchise renewals shall be in accordance with applicable law. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

[*History*: formerly § 4.08.230; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.190 Consumer Protections - Operational Standards.

(a) Except as otherwise provided in the Franchise Agreement, Grantee shall maintain the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operation:

(1) Sufficient toll-free telephone line capacity during normal business hours to assure that telephone calls shall be answered before the fourth (4th) ring; telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds; and callers needing to be transferred shall not be required to wait more than thirty (30) seconds before being connected to a service representative. Under normal operating conditions, a caller shall receive a busy signal less than three percent (3%) of the time.

(2) Emergency toll free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays. After normal business hours, the telephone calls may be answered by a service or an automated response system, including an answering machine. Calls received after normal business hours must be responded to by a trained company representative on the next business day.

(3) A conveniently situated local business and service and/or payment office located within the Town of Colma or no further than one mile from the Town of Colma or Daly City city limits, open during normal business hours at least eight (8) hours daily, and at least four (4) hours weekly on evenings or weekends, and adequately staffed to accept Subscriber payments and respond to service requests and complaints. The Grantee may petition the Grantor to reduce its business hours if the extended hours are not justified by Subscriber demand.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing major System malfunction on a twenty-four (24) hour per day basis.

(5) An installation staff, capable of installing service to any Subscriber requiring a Standard Installation within seven (7) days after receipt of a request, in all areas where trunk and feeder cable have been activated. "Standard Installations" shall be those that are located up to one hundred twenty-five (125) feet from the existing distribution System, unless otherwise defined in any Franchise Agreement.

(6) Grantee shall schedule, within a specified four (4) hour time period during normal business hours, all appointments with Subscribers for installation of service, service calls and other activities at the Subscriber location. Grantee may schedule installation and service calls outside of normal business hours for the express convenience of the customer. Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted and the appointment rescheduled, as necessary, at a time which is reasonably convenient for the customer.

(b) The standards of subparagraphs i. through vi above shall be met not less than ninety percent (90%) of the time measured on a quarterly basis.

[*History*: formerly § 4.08.300; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.200 Consumer Protections - Service Standards.

(a) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the Cable System, preferably between midnight and six A.M. (6:00 A.M.) local time.

(b) The Grantee shall maintain a repair force of technicians normally capable of responding to Subscriber requests for service within the following time frames:

(1) For a system outage: Within two (2) hours, including weekends, of receiving Subscriber calls or requests for service which by number identify a system outage of

sound or picture of one (1) or more channels, affecting at least ten percent (10%) of the Subscribers of the System.

(2) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one (1) or more channels that affects three (3) or more Subscribers. On weekends, an outage affecting fewer than three (3) Subscribers shall result in a service call no later than the next business day.

(3) For inferior signal quality: Within two (2) business days of receiving a request for service identifying a problem concerning picture or sound quality.

(c) In the event the service problem requires a visit by a technician to the customer=s home, Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a Subscriber not being home when the technician arrives, the technician shall leave written notification of arrival.

(d) Grantee shall not charge for the repair or replacement of defective or malfunctioning equipment provided by Grantee to Subscribers, unless the defect was caused by the Subscriber.

(e) Unless excused, Grantee shall determine the nature of the problem within two (2) business days of beginning work and resolve all Cable System related problems within five (5) business days.

[*History*: formerly § 4.08.310; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.210 Consumer Protections - Billing and Information Standards.

(a) Subscriber bills shall be clear, concise and understandable. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the Grantee shall respond to a written complaint from a Subscriber within thirty (30) days.

(c) Upon request from a subscriber or Grantor acting on behalf of a subscriber, Grantee shall provide credits or refunds, equal to or greater than the prorata share of the customer=s monthly bill, to Subscribers whose service has been interrupted for four (4) or more hours. All credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For Subscribers terminating service, refunds shall be issued promptly, but no later than thirty (30) days after the return of any Grantee-supplied equipment.

(d) Grantee shall provide written information on each of the following areas (i) at the time of the installation of service, (ii) at least annually to all Subscribers, and (iii) at any time upon request:

(1) Products and services offered; and

(2) Prices and options for programming services and conditions of subscription to programming and other services; and

(3) Installation and service maintenance policies; and

(4) Instructions on how to use the Cable Service; and

(5) Channel positions of programming carried on the System; and

(6) Billing and complaint procedures, including the address and telephone number of the Grantor office designated for dealing with cable-related issues.

(e) Subscribers shall be notified of any changes in rates, programming services or channel positions as soon as possible in writing and in accordance with State and Federal Law. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In additions, Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the information required in Section 4.08.320 D above.

[*History*: formerly § 4.08.320; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.220 Consumer Protections - Compliance with Standards.

(a) Upon thirty (30) days prior written notice, Grantee shall respond to a request for information made by Grantor regarding Grantee's compliance with any or all of the standards required in Sections 4.08.300, 4.08.310, and 4.08.320 above. Grantee shall provide sufficient documentation to permit Grantor to verify Grantee's compliance. Grantee may request and Grantor shall not unreasonably deny a request for extension of time.

(b) A repeated and verifiable pattern of non-compliance with the consumer protection standards of Sections 4.08.300, 4.08.310, and 4.08.320 above, after Grantee's receipt of due notice and a reasonable opportunity to cure, may be deemed a material breach of the Franchise Agreement.

[*History*: formerly § 4.08.330; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.230 Consumer Protections - Subscriber Complaints and Disputes.

(a) Grantee shall establish written procedures for receiving, acting upon and resolving Subscriber complaints without intervention by the Grantor. The written procedures shall

prescribe the manner in which a Subscriber may submit a complaint in writing specifying the Subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with Grantor. The written procedures shall include a requirement that Grantee respond to any written complaint from a Subscriber within fifteen (15) days of receipt.

(b) Upon prior written request, Grantor shall have the right to review Grantee's response to any Subscriber complaints in order to determine Grantee's compliance with the Franchise requirements, subject to the Subscriber's right to privacy.

(c) Subject to applicable law, it shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to rebuild, modify, or sell the System, or the Grantor gives notice of intent to terminate or not to renew the Franchise, the Grantee shall act so as to ensure that all Subscribers receive Cable Service so long as the Franchise remains in force.

(d) In the event of a change of control of Grantee, or in the event a new operator acquires the System, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all Subscribers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the System.

[*History*: formerly § 4.08.340; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.240 Consumer Protections - Other Standards.

(a) In the event Grantee fails to operate the System for seven (7) consecutive days without prior approval or subsequent excuse of the Grantor, the Grantor may, at its sole option, operate the System or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor should fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the System, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by Grantor that are the result of Grantee's failure to perform.

(b) All officers, agents or employees of Grantee or its contractors or subcontractors who, in the normal course of work come into contact with members of the public or who require entry onto Subscribers' premises shall carry photo-identification card. Grantee shall account for all identification cards at all times. Every vehicle of the Grantee or its major subcontractors shall be clearly identified as working for Grantee.

(c) Additional service standards and standards governing consumer protection and response by Grantee to Subscriber complaints not otherwise provided for in this Ordinance may be established in the Franchise Agreement or by separate ordinance. A verified and continuing pattern of noncompliance may be deemed a material breach of the Franchise, provided that Grantee shall receive due process, including prior written notification and a reasonable opportunity to cure, prior to any sanction being imposed.

[*History*: formerly § 4.08.350; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.250 Franchise Fee.

(a) Following the issuance and acceptance of the Franchise, the Grantee shall pay to the Grantor a Franchise Fee or right of way use fee on Gross Annual Revenues in the amount and at the times set forth in the Franchise Agreement.

(b) The Grantor, on an annual basis, shall be furnished a statement within ninety (90) days of the close of the calendar year, either audited and certified by an independent certified public accountant or certified by an officer of the Grantee, reflecting the total amounts of gross revenues and all payments, deductions and computations for the period covered by the payment. Upon thirty (30) days prior written notice, Grantor shall have the right to conduct an independent financial audit of Grantee's Gross Annual Revenue and Franchise Fee records, in accordance with Generally Accepted Accounting Procedures (GAAP), and if such audit indicates a Franchise Fee underpayment of three percent (3%) or more, the Grantee shall assume all reasonable documented costs of such audit.

(c) Except as otherwise provided by law, no acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Ordinance or for the performance of any other obligation of the Grantee.

(d) In the event that any Franchise Fee payment or payment of any adjustment to any Franchise Fee is not made on or before the dates specified in the Franchise Agreement, Grantee shall pay:

(1) An interest charge, computed from such due date, at an annual rate equal to the highest of the most recently published prime lending rate of any of the five (5) largest member banks of the New York Clearing House Association, plus one percent (1%) during the period for which payment was due; and

(2) If the payment is late by six (6) months or more, a sum of money equal to five percent (5%) of the amount due in order to defray those additional expenses and costs incurred by the Grantor due to Grantee's delinquent payment.

(e) Franchise fee payments shall be made in accordance with the schedule indicated in the Franchise Agreement.

[*History*: formerly § 4.08.400; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.260 Security Fund.

(a) Grantor may require Grantee to provide a security fund, in an amount and form established in the Franchise Agreement. The amount of the security fund shall be established based on the extent of the Grantee's obligations under the terms of the Franchise.

(b) The security fund shall be available to Grantor to satisfy all claims, liens and/or taxes due Grantor from Grantee which arise by reason of construction, operation, or maintenance of the System, and to satisfy any actual or liquidated damages arising out of a material breach of the Franchise Agreement, subject to the procedures and amounts designated in the Franchise Agreement.

(c) If the security fund is drawn upon by Grantor in accordance with the procedures established in this Ordinance and the Franchise Agreement, Grantee shall cause the security fund to be replenished to the original amount no later than thirty (30) days after receiving written confirmation from the bank where such security fund is deposited that Grantor has made a draw against the security fund. Failure to replenish the security fund shall be deemed a material breach of the Franchise.

[*History*: formerly § 4.08.410; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.270 Construction Requirements - System.

(a) Grantee shall not construct any Cable System facilities until Grantee has secured the necessary permits from Grantor, or other responsible public agencies.

(b) In those areas of the City where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the Grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground.

(c) In those areas of the City where the Grantee's cables are located on the above-ground transmission or distribution facilities of the public and municipal utility providing telephone or electric power service, and in the event that the facilities of both such public and municipal utilities subsequently are placed underground, then the Grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at Grantee's cost, provided, however, that if Grantee is required by the Grantor to place any of its pre-existing above-ground Cable System underground, than Grantee shall be allowed to pass such under grounding costs onto its Subscribers, in accordance with Federal Law. Certain of Grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the Franchise Agreement.

(d) Any changes in or extensions of any poles, anchors, wires, cables, conduits, vaults, laterals or other fixtures and equipment (herein referred to as "Structures"), or the construction of any additional Structures, in, upon, along, across, under or over the streets, alleys and public ways shall be made under the direction of Grantor's City engineer or a designee, who shall, if the proposed change, extension or construction conforms to the provisions hereof, issue written permits therefore. The height above public thoroughfares of all aerial wires shall conform to the requirements of the California regulatory body having jurisdiction thereof.

(1) All transmission and distribution Structures, lines and equipment erected by the Grantee shall be located so as not to interfere with the proper use of the Public Rights-

of-Way, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said Public Rights-of-Way, and not to materially interfere with existing public and municipal utility installations.

(2) In the event that any property or improvement of the Grantor in the Public Rights-of-Way is disturbed or damaged by the Grantee or any of its contractors, agents or employees in connection with undertaking any and all work pursuant to the rights granted to the Grantee pursuant to this Ordinance and the Franchise Agreement, the Grantee shall promptly, at the Grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was so disturbed or damaged. If such property or improvement shall within one (1) year of the date the restoration was completed, become uneven, unsettled or otherwise require additional restorative work, repair or replacement because of the initial disturbance or damage to the property by the Grantee, then the Grantee, as soon as reasonably possible, shall, promptly upon receipt of written notice from the Grantor and at the Grantee's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement which was disturbed or damaged. Any such restoration by the Grantee shall be made in accordance with such materials and specifications as may, from time to time, be provided for by Grantor ordinance.

(3) Prior to commencing any work on the System in the Public Rights-of-Way, the Grantee shall obtain any and all permits, licenses and authorizations lawfully required for such work. If emergency work on the System in the Public Right-of-Way is required, the Grantee shall with all due diligence, seek to obtain any and all such required permits, licenses and authorizations within three (3) working days after commencing such emergency work.

(4) There shall be no unreasonable or unnecessary obstruction of the Public Rights-of-Way by the Grantee in connection with any of the work provided for herein. The Grantee shall maintain any barriers, signs and warning signals during any work performed on or about the Public Rights-of-Way or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property.

(5) If the Grantor lawfully elects to alter or change the grade or location of any Public Right-of-Way, the Grantee shall, upon reasonable notice by the Grantor, and in a timely manner, remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at it own expense. If, however, other similarly situated users of such Public Rights-of-Way are compensated or reimbursed for any of the cost associated with the removal, relay or relocation of any equipment or facilities, Grantee shall be entitled to compensation in kind.

(6) The Grantee shall not place poles, conduits or other fixtures above or below ground where the same will interfere with any gas, electric, telephone fixtures, water hydrants or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed as to comply with all ordinances of the Grantor.

(7) In accordance with applicable law, the Grantee or any other utility user of the Public Rights-of-Way may be required by the Grantor to permit joint use of its poles and/or conduit located in the Public Rights-of-Way, by any other user or utility insofar as such joint use may be reasonably practicable and upon payment of a reasonable rental fee for such usage. In the absence of agreement regarding such joint use, each party shall be entitled to exercise any rights and defenses provided by applicable law.

(8) The Grantee shall, on request of any Person holding a moving permit issued by the Grantor, temporarily raise or lower its wires or fixtures to permit the moving of buildings. The expense of such temporary raising or lowering of wires or fixtures shall be paid by the Person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) business days prior written notice to arrange for the temporary wire or equipment changes.

(9) Notwithstanding any ordinance governing the trimming of trees, the Grantee shall have the authority to trim any trees or other natural growth overhanging the Public Rights-of-Way so as to prevent the branches of such trees or other natural growth from coming in contact with the Grantee's wires, cables and other equipment. The Grantor may require all trimming of trees and natural growth to be done under its supervision and direction, at the expense of the Grantee.

[*History*: formerly § 4.08.450; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.280 Construction Requirements - Multiple Franchises.

(a) Subject to applicable law, in the event that more than one (1) Franchise is awarded, the Grantor reserves the right to limit the number of drop cables per residence.

(b) The Grantor reserves the right to grant an encroachment permit to a Cable Franchisee applicant to install conduit and/or cable in anticipation of the granting of a Franchise. Such installations shall be at the applicant's risk, with no recourse against the Grantor in the event the pending Franchise application is not granted. The Grantor may require an applicant to provide a separate trench for its conduit and/or cable, at the applicant's cost.

(c) If the Grantor authorizes or permits another Cable System to operate within the municipal limits of the City, it shall do so on conditions that such new Cable System entrant indemnify and hold harmless the Grantee from and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities and all other costs including those of Grantee, the City and utilities, incident to inspections, make ready, and construction of an additional Cable System in the Franchise Area; and Grantee shall be designated a third party beneficiary of such conditions as are incorporated into the authorization(s) granted to such new entrant Cable System.

[*History*: 4.08.460; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.290 Technical Standards.

The Grantee shall construct, install, operate and maintain its Cable System in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its Franchise Agreement. In addition, the Grantee shall provide to the Grantor, upon written request, a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC and Franchise standards and guidelines.

[*History*: formerly § 4.08.500; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.300 Non-compliance with Technical Standards.

Repeated and verified failure to maintain specified technical standards shall constitute a material breach of the Franchise.

[*History*: formerly § 4.08.510; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.310 Indemnification and Hold Harmless.

Grantee shall indemnify, defend and hold Grantor, its officers, agents and employees harmless from any liability, claims, damages, costs or expenses, to the extent provided in the Franchise Agreement. The grantee shall have no recourse whatsoever against the city for any loss, cost, expense, or damage arising out of any provision or requirement of this chapter or of any franchise issued under this chapter or because of its enforcement.

[*History*: formerly § 4.08.550; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.320 Insurance.

(a) On or before commencement of Franchise operations, the Grantee shall furnish to Grantor Certificates of Insurance for liability, Workers' Compensation and property insurance from appropriately qualified insurance companies, which shall be "admitted" in the State of California. The Certificates of Insurance shall provide that the insurance is in force and will not be canceled or modified without thirty (30) days prior written notice to Grantor. The Certificates of Insurance shall be in a form satisfactory to Grantor. The Grantee shall maintain at its cost throughout the term of the Franchise, the following insurance:

(b) The policy of liability insurance shall:

(1) Name Grantor, its officers, agents and employees as additional insureds;

(2) Indemnify all liability for personal and bodily injury, death and damage to property arising from activities conducted and premises used pursuant to this Ordinance by providing coverage therefore, including but not limited to:

(A) Negligent acts or omissions of Grantee, and its agents, servants and employees, committed in the conduct of Franchise operations, and/or

(B) Use of motor vehicles;

(3) Provide a combined single limit for comprehensive general liability and comprehensive automobile liability insurance in the amount provided for in the Franchise Agreement.

(c) The policy of Workers' Compensation Insurance shall comply with the laws of the State of California.

(d) The policy of property insurance shall provide fire insurance with extended coverage on the Franchise property used by Grantee in the conduct of Franchise operations in an amount adequate to enable Grantee to resume Franchise operations following the occurrence of any risk covered by this insurance.

(e) The Certificates of Insurance shall indicate the following information:

(1) The policy number;

(2) The date upon which the policy will become effective and the date upon which it will expire;

(3) The names of the named insureds and any additional insured required by the Franchise Agreement;

(4) The subject of the insurance;

(5) The type of coverage provided by the insurance; and

(6) The amount or limit of coverage provided by the insurance.

(f) If the Certificates of Insurance do not provide all of the above information, Grantor reserves the right to inspect the relevant insurance policies.

(g) The commencement of Franchise operations shall not begin until Grantee has complied with the aforementioned provisions of this Section.

(h) In the event Grantee fails to maintain any of the above-described policies in full force and effect, Grantor shall, upon forty-eight (48) hours notice to Grantee, have the right to procure the required insurance and recover the cost thereof from Grantee. Grantor shall also have the right to suspend the Franchise during any period that Grantee fails to maintain said policies in full force and effect. In order to account for increases in consumer prices, no more than once during any five (5) year period, Grantor shall have the right to order Grantee to increase the amounts of the insurance provided in the Franchise Agreement. Such order may

be made by Grantor after conducting a duly noticed public hearing. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

[*History*: formerly § 4.08.560; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.330 Records and Reports.

(a) Grantee shall at all times maintain and make available to grantor upon request:

(1) A record of all service calls and interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call, subject to the Subscriber's right of privacy.

(2) A full and complete set of plans, records and as-built maps showing the locations of the Cable System installed or in use in the City, exclusive of Subscriber service drops and equipment provided in Subscriber's homes.

(3) If requested by Grantor, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Grantor within thirty (30) days following any written request by Grantor, in a form reasonably acceptable to the Grantor.

(b) The Grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the City's rights under this Ordinance or the Grantee's Franchise Agreement.

(c) Upon reasonable notice, and during normal business hours, Grantee shall permit examination by any duly authorized representative of the Grantor of all:

(1) Franchise property and facilities, together with any appurtenant property and facilities of Grantee situated within the Service Area; and

(2) All records relating to the Franchise, provided they are necessary to enable the Grantor to carry out its regulatory responsibilities under this Ordinance or the Franchise Agreement. Grantee shall have the right to be present at any such examination.

[*History*: formerly § 4.08.600; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.340 Annual Reports.

(a) Within one hundred twenty (120) days of a written request by Grantor, Grantee shall submit a report to Grantor with respect to the preceding calendar year. The report shall be in a form approved by Grantor, including, but not limited to, the following information:

(1) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the Cable System, including but not limited to, services begun or discontinued during the reporting year;

(2) A list of Grantee's officers and members of its board of directors;

(3) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Grantee;

(4) An indication of any residences in Grantee's Service Area where service is not available, and a schedule for providing service;

(5) Information as to -

(A) the number of homes passed;

(B) total Subscribers; and

(C) the total number of Basic and total number of Pay Subscribers.

(6) Any other information relevant to Franchise regulation which the Grantor shall reasonably request, and which is relevant to its regulatory responsibilities.

(b) Upon request, Grantee shall submit to Grantor copies of all pleadings, applications and reports submitted by Grantee to any Federal, State or local court, regulatory agency, or other governmental body as well as copies of all decisions issued in response to such pleadings, applications and reports, which are non-routine in nature and which will materially affect its Cable System within the Franchise Area. Information otherwise confidential by law and so designated by Grantee, which is submitted to Grantor, shall be retained in confidence by Grantor and its authorized agents and shall not be made available for public inspection. Notwithstanding the foregoing, Grantee shall have no obligation to provide copies of documents to Grantor which contain trade secrets of Grantee or which are otherwise of a confidential or proprietary nature to Grantee unless it receives satisfactory assurances from Grantor that such information can and will be held in strictest confidence and protected by the Grantor. To the extent possible, Grantee will provide Grantor with summaries of any required documents or copies thereof with trade secrets and proprietary matters deleted there from. The burden of proof shall be on Grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the Grantor.

(c) If Grantee is publicly held, a copy of the most current published 10K of the Grantee=s parent shall be submitted to Grantor.

(d) Upon Grantor's request, but no more than annually, Grantee shall submit to Grantor a privacy report indicating the degree of compliance with the provisions contained in Section 4.08.180 herein and all steps taken to assure that the privacy rights of individuals have been protected.

(e) All reports required under this Ordinance, except those required by law to be kept confidential, shall be available for public inspection in the Grantor's offices during normal business hours.

(f) All reports and records required to be delivered to Grantor under this Ordinance shall be furnished at the sole expense of Grantee, except as otherwise provided in the Franchise Agreement.

(g) The willful refusal, failure, or willful negligence of Grantee to file any of the reports required as and when due under this Ordinance, may be deemed a material breach of the Franchise Agreement if such reports are not provided to Grantor within thirty (30) days after written request therefore, and may subject the Grantee to all remedies, legal or equitable, which are available to Grantor under this Ordinance or the Franchise Agreement.

(h) Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under this Ordinance or under the Franchise Agreement may be deemed a material breach of the Franchise and may subject Grantee to all remedies, legal or equitable, which are available to Grantor.

[*History*: formerly § 4.08.610; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.350 Biannual Performance Reviews.

(a) Every two (2) years throughout the term of the Franchise, if reasonably requested by prior written notice from the Grantor, Grantor and Grantee shall meet publicly to review System performance and quality of service. The various reports required pursuant to this Ordinance, results of technical performance tests, the record of Subscriber complaints and Grantee's response to those complaints, shall be utilized as the basis for review. In addition, any Subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered. Within thirty (30) days after the conclusion of such a review meeting, Grantor may issue findings with respect to the Cable System's Franchise compliance and quality of service.

(b) If Grantor determines that Grantee is not in compliance with the requirements of this Ordinance or the Grantee's Franchise Agreement, Grantor shall provide Grantee, in the form of written findings, the specific details of each alleged noncompliance, Grantor may then direct Grantee to correct the areas of noncompliance within a reasonable period of time. Failure of the Grantee, after thirty (30) day notice, to:

(1) Correct the area(s) of noncompliance within the period specified therefore; or

(2) Commence compliance within such period and diligently achieve compliance thereafter; or

(3) Demonstrate that the allegations of noncompliance are incorrect;

shall be considered a material breach of the Franchise, and Grantor may exercise any remedy within the scope of this Ordinance and the Franchise Agreement considered appropriate under the circumstances.

[*History*: formerly § 4.08.650; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.360 Special Performance Reviews.

When there have been extensive complaints made or where there exists other demonstrative evidence which, in the reasonable judgment of the Grantor, casts reasonable doubt on the reliability or quality of Cable Service to the effect that the Grantee is not in compliance with the requirements of this Ordinance or its Franchise, the Grantor shall have the right to compel the Grantee to test, analyze and report on the performance of the Cable System in order to protect the public against substandard Cable Service. Grantor may not compel Grantee to provide such tests or reports unless and until Grantor has provided Grantee with at least thirty (30) days prior written notice of its intention to exercise its rights under this Section and has provided Grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the Grantor no later than thirty (30) days after the Grantor notifies the Grantee in writing that it is exercising such right, and shall be made at Grantee's sole cost. Such report shall include the following information: The nature of the complaints which precipitated the special tests, what System component was tested, the equipment used and procedures employed in said testing, the results of such tests, and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

[*History*: formerly § 4.08.660; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.370 Remedies for Franchise Violations.

If Grantee fails to perform in a timely manner any material obligation required by this Ordinance or a Franchise granted hereunder, following reasonable written notice from the Grantor and a reasonable opportunity to cure such nonperformance in accordance with the provisions of Section 15 of this Ordinance and the Franchise, Grantor may at its option and in its sole discretion:

(a) Cure the violation and recover the actual cost thereof from the security fund established herein if such violation is not cured within thirty (30) days after written notice to the Grantee of Grantor's intention to cure and draw upon the security fund;

(b) Assess against Grantee liquidated damages in an amount set forth in the Franchise Agreement for any such violations(s) if such violation is not cured, or if Grantee has not commenced a cure, on a schedule reasonably acceptable to Grantor, within thirty (30) days after written notice to the Grantee of Grantor's intention to assess liquidated damages. Such assessment may be withdrawn from the security fund, and shall not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or applicable law, including without limitation, its right to recover from Grantee such additional damages, losses,

costs and expenses, including actual attorney's fees, as may have been suffered or incurred by Grantor by reason of or arising our of such material breach of the Franchise.

[*History*: formerly § 4.08.700; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.380 Procedure for Remedying Violations.

(a) Prior to imposing any remedy or other sanction against Grantee specified in this Ordinance, Grantor shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures:

Grantor shall first notify Grantee of the alleged violation in writing by personal delivery or registered or certified mail, and demand correction, or evidence of non-violation, within a reasonable time, which shall not be less than fifteen (15) business days in the case of the failure of the Grantee to pay any sum or other amount due the Grantor under this Ordinance or the Grantee's Franchise and thirty (30) business days in all other cases. If Grantee fails to:

(1) correct the alleged violation within the time prescribed; or

(2) commence correction of the alleged violation within the time prescribed and diligently remedy such alleged violation thereafter; or

(3) provide evidence that there is no violation,

the Grantor shall then give, by personal delivery or registered or certified mail written notice of not less than thirty (30) days of a public hearing to be held before the Council. Said notice shall set forth in detail each of the violations alleged to have occurred.

(b) Subsequent to the public hearing, the Council shall hear and consider all other relevant evidence, and thereafter render findings and its decision.

(c) If the Council finds that

(1) The Grantee has corrected the alleged violation; or

(2) The Grantee has diligently commenced correction of such alleged violation after notice thereof and is diligently proceeding to fully remedy such alleged violation; or

(3) No material violation has occurred,

then the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) If the Council finds that material violations exist and that Grantee:

(1) Has not corrected the same in a satisfactory manner; or

(2) Has not diligently commenced correction of such violation after notice thereof and is not diligently proceeding to fully remedy such violation;

then the Council may impose one (1) or more of the remedies provided in this Ordinance and the Franchise Agreement as it, in its discretion, deems appropriate under the circumstances.

[*History*: formerly § 4.08.710; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.390 Grantors Power to Revoke.

(a) Grantor may revoke any Franchise granted pursuant to this Ordinance and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by Grantee and a material breach under the Franchise:

(1) If Grantee fails to perform any of its material obligations under this Ordinance or the Franchise Agreement and continues such failure to perform after receipt of due notice and a reasonable opportunity to cure;

(2) If Grantee fails to provide or maintain in full force and effect the insurance coverage or security fund as required in the Franchise Agreement;

(3) If Grantee knowingly violates any order or ruling of any regulatory body having jurisdiction over the Grantee relative to the Grantee's Franchise, unless such order or ruling is being contested by Grantee in good faith in an appropriate proceeding;

(4) If Grantee knowingly practices any material fraud or deceit upon Grantor;

(5) If Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.

(b) After completing the procedures set forth in Section 4.08.150b above, the Grantor may make a formal request before the Council that the Grantee's Franchise be revoked. The Council shall cause to be served on the Grantee written notice of its intent to consider revoking Grantee' Franchise. Such notice shall be served on Grantee at least thirty (30) days prior to the date of the hearing on the issue. The notice shall contain the time an place of the hearing and shall be published at least once in a newspaper of general circulation within the Franchise area ten (10) days prior to the hearing date.

(c) The Council shall hear any Person(s) interested in the revocation and within ninety (90) days after the date of the hearing shall make its determination, based on a preponderance of the evidence, whether the Grantee has committed a material breach of the Franchise.

(d) If the Grantor determines that the Grantee has committed a material breach, then the Grantor may:

(1) Declare the Franchise revoked and the security fund and bonds forfeited; or

(2) If the material breach is curable by the Grantee, direct the Grantee to take appropriate remedial action within the time and manner and under the terms and conditions reasonably specified by the Grantor.

(e) The termination and forfeiture of the Grantee's Franchise shall in no way affect any right of Grantor to pursue any remedy under the Franchise or any provision of law.

[*History*: formerly § 4.08.720; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.400 Appeal of Finding of Revocation.

The Grantee may appeal a finding of revocation made pursuant to Section 4.08.720 to an appropriate court of jurisdiction, which shall have the power to review "de novo." Any such appeal must be taken by the Grantee within sixty (60) days of the issuance of the Grantor's decision to revoke the Franchise.

[*History*: formerly § 4.08.730; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.410 Force Majeure; Grantee's Inability to Perform.

In the event Grantee's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise granted hereunder is prevented by a cause or event not within Grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that such inability to perform shall not relieve a Grantee from the obligations imposed by Section 4.08.180 pertaining to refunds and credits for interruptions in service. For the purpose of this Section, causes or events not within the control of Grantee shall include without limitation acts of God, war, strikes, sabotage, riots or civil disturbances, labor disputes, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the Grantee to perform or failure of the Grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Grantee, or the failure of the Grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the Cable System where the Grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

[*History*: formerly § 4.08.750; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.420 Abandonment or Removal of Franchise Property.

(a) If the Grantee discontinues the use of any of its property within the Public Rights-of-Way for a continuous period of twelve (12) months, such property shall be deemed to have been abandoned by Grantee. Any part of the Cable System that is parallel or redundant to other parts of the System and is intended for use only when needed as a backup for the System or a part thereof shall not be deemed to have been abandoned because of its lack of use.

(b) Grantor, upon such reasonable terms as Grantor may lawfully impose, may give Grantee permission to abandon, without removing, any System facility or equipment laid, directly constructed, operated or maintained under the Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, the Grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from Grantor and shall restore any affected Public Right-of-Way to its former state at the time such facilities and equipment were installed. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all Public Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the Public Rights-of-Way, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by Grantee with the terms and conditions of this Section 4.08.170.

(c) Upon the approved abandonment of any Franchise property, the Grantee, if required by the Grantor, shall submit to the Grantor an instrument, satisfactory in form to the Grantor, transferring to the Grantor the ownership of the abandoned Franchise property.

(d) At the expiration of the term for which the Franchise is granted, or upon its revocation or earlier expiration, as provided herein, in any such case without renewal, the Grantor shall have the right to require Grantee to remove, at its own expense, all above-ground portions of the Cable System from all streets and public ways within the Service Area within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

(e) Notwithstanding anything to the contrary set forth in this Ordinance, the Grantee may abandon any underground Franchise property in place so long as it does not materially interfere with the use of the Public Rights-of-Way in which such property is located or with the use thereof by any public utility or other Franchise holder.

[*History*: formerly § 4.08.800; ORD. 638, 12/14/05]

4.08.430 Restoration by Grantor; Reimbursement of Costs.

Upon reasonable written notice and upon the failure of the Grantee to commence, pursue or complete any work to be done in any Public Right-of-Way required by law or by the provisions of this Ordinance or the Franchise Agreement, within the time prescribed and to the reasonable satisfaction of the Grantor, the Grantor may cause the work to be commenced and/or completed. The Grantor shall provide to the Grantee an itemized work order setting forth in detail the exact nature of the work completed and the supplies used in such work. The Grantee shall pay to the Grantor the reasonable costs for such work no later than thirty (30) days after receipt of the itemized work order.

[*History*: formerly § 4.08.810; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.440 Extended Operation and Continuity of Service.

Upon expiration or revocation of the Franchise, the Grantor shall have the discretion to permit Grantee to continue to operate the Cable System for an extended period of time. Grantee shall continue to operate the System under the terms and conditions of this Ordinance and the Franchise and to provide the regular Subscriber service and any and all of the services that may be provided at that time. It shall be the right of all Subscribers to continue to receive all available services provided that financial and other obligations to Grantee are honored. The Grantee shall use reasonable efforts to provide continuous, uninterrupted service to its Subscribers, including operation of the System during transition periods following Franchise expiration or termination.

[*History*: formerly § 4.08.820; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.450 Receivership and Foreclosure.

(a) At the option of the Grantor and subject to applicable law, a Franchise granted hereunder may be revoked one hundred twenty (120) days after appointment of a receiver(s) or trustee(s) to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) the receivership or trusteeship shall have been vacated within said one hundred twenty (120) days; or

(2) such receivers or trustees within said one hundred twenty (120) days shall have remedied all the defaults under the Franchise or provided a plan for the remedy of such defaults which is satisfactory to the Grantor; or

(3) such receivers or trustees shall, within said one hundred twenty (120) days, have executed an agreement duly approved by the court having jurisdiction whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise.

(b) In the case of a foreclosure or other judicial sale of the Cable System, in whole or in part, the Grantor may serve notice of revocation upon Grantee and the successful bidder at such sale, and all rights and privileges of the Grantee hereunder shall be revoked thirty (30) days after service of such notice, unless:

(1) Grantor shall have approved the transfer of the Franchise, in the manner provided by law; and

(2) the successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the Franchise.

[*History*: formerly § 4.08.830; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.460 Grantor and Subscriber Rights.

(a) There is reserved to the City every right and power which is required to be reserved in this chapter or provided by any ordinance of the City, and the grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such rights or power, heretofore or hereafter enacted or established.

(b) Nothing in this chapter shall be deemed or construed to impair or affect in any way, to any extent, the right of the City to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a fair and just value, which shall not include any amount for the franchise itself or for any of the rights or privileges granted, and nothing contained in this chapter shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the city's right of eminent domain, subject to applicable state and/or federal regulations.

(c) Neither the granting of any franchise under this chapter nor any of the provisions contained in this chapter shall be construed to prevent the City from granting any identical or similar franchise to any other person, firm or corporation, within all or any portion of the city.

(d) Neither the granting of any franchise nor any provision of this chapter shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

(e) The Council may do all things which are necessary and convenient in the exercise of its jurisdiction under this chapter and may determine any question of fact which may arise during the existence of any franchise granted hereunder.

(1) The Grantee shall be required to give notice to all subscribers of the import of this subsection, in a form to be approved by the city manager, on the billing at least once every six months. The notice shall specify the right of the subscriber to have his controversy with the grantee adjusted, settled or compromised by the city manager.

(2) The city manager is authorized and empowered to adjust, settle or compromise any controversy or charge arising from the operations of any grantee under this chapter, either on behalf of the City, the grantee or any subscriber, in the best interest of the public. Either the grantee or any member of the public who may be dissatisfied with the decision or the city manager may appeal the matter to the Council for hearing and determination. The Council may accept, reject or modify the decision of the City manager, and the Council may adjust, settle or compromise any controversy or cancel any charge arising from the operations of any grantee or from any provision of this chapter.

[*History*: formerly § 4.08.900; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.470 Waiver.

The Grantor shall have the right to waive any provision of the Franchise, except those required by Federal or State regulation, if the Grantor determines (1) that it is in the public interest to do so, and (2) that the enforcement of such provision will impose an undue hardship on the Grantee or on the Subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the Grantor. Waiver of any provision in one (1) instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the Franchise unless the statement so recites.

[*History*: formerly § 4.08.910; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.480 Subscribers Rights.

(a) Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, or sex. Grantee shall comply at all times with all other applicable Federal, State and local laws and regulations relating to nondiscrimination.

(b) Grantee shall adhere to the applicable equal employment opportunity requirements of Federal, State and local regulations, as now written or as amended from time to time.

(c) Neither Grantee, nor any Person, agency, or entity shall, without the Subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or Subscriber outlet or receiver for any purpose except routine maintenance of the System, detection of unauthorized service, polling with audience participation, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.

(d) In the conduct of providing its Cable Services or in pursuit of any collateral commercial enterprise resulting therefrom, Grantee shall take reasonable steps to prevent the invasion of a Subscriber's or general citizen's right of privacy or other personal rights through the use of the System as such rights are delineated or defined by applicable law. The Grantee shall not without lawful court order or other applicable valid legal authority utilize the System's interactive two-way equipment or capability, if such equipment or capability exists, for unauthorized personal surveillance of any Subscriber or general citizen.

(e) No cable line, wire amplifier, converter, or other piece of equipment owned by Grantee shall be installed by Grantee in the Subscriber's premises, other than in appropriate easements, without first securing any required consent. If a Subscriber requests service, permission to install upon Subscriber's property shall be deemed granted.

(f) The Grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party without consent of the Subscriber pursuant to State and Federal privacy laws:

(1) Any list of the names and addresses of Subscribers containing the names and addresses of Subscribers who request in writing to be removed from such list; and

(2) Any list which identifies the viewing habits of individual Subscribers, without the prior written consent of such Subscribers. This does not prohibit the Grantee from providing composite ratings of Subscriber viewing to any party.

[*History*: formerly § 4.08.920; ORD. 549, 3/10/99; ORD. 638, 12/14/05]

4.08.490 Reserved.

4.08.500 General Provisions.

(a) *Purpose.* Sections 4.08.500 through 4.08.570 are intended to be applicable to state franchise holders who have been awarded a state video franchise under the California Public Utilities Code section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006 ["DIVCA"]), to serve any location(s) within the incorporated boundaries of the Town. It is the purpose of these sections to implement within the incorporated boundaries of the Town the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated thereunder that are applicable to a "local franchising entity" or a "local entity" as defined in DIVCA.

(b) *Rights Reserved.*

(1) The rights reserved to the Town under this Section 4.08.500 are in addition to all other rights of the Town, whether reserved by Section 4.08.500 or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the Town.

(2) Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

(A) compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the Town, including, but not limited to, compliance with the conditions that the Town may establish before facilities may be constructed for, or providing, non-video services;

(B) any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and

(C) any permit, agreement or authorization for occupying any other property of the Town or any private person to which access is not specifically granted by the state franchise.

(c) *Compliance with Other Ordinances.* Nothing contained in section 4.08.500 through 4.08.570 shall ever be construed so as to exempt a state franchise holder from compliance with all ordinances, rules or regulations of the Town now in effect or which may be hereafter adopted which are consistent with this Section or California Public Utilities Code section 5800 *et seq.*

[*History*: ORD. 669, 7/9/08]

4.08.510 Definitions.

(a) *Definitions Generally -- Interpretation of Language.* For purposes of sections 4.08.500 through 4.08.570, the following terms, phrases, words, and their derivations shall have the meaning given in this Section. Unless otherwise expressly stated, words not defined in Section 4.08.510 shall be given the meaning set forth in Section 4.08.050 of the Colma Municipal Code as may be amended from time to time, unless the context indicates otherwise. Words not defined in Subsection (b) or Section 4.08.050 of the Colma Municipal Code shall have the same meaning as established in (1) DIVCA, and if not defined therein, (2) Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47USC § 521 et. seq., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The word "shall" and "will" are always mandatory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

(b) *Specific Terms Defined*

"Access," "PEG access," "PEG use," or "PEG" means the availability of a cable or state franchise holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including the Town and its designated access providers, to acquire, create, and distribute programming not under a state franchise holder's editorial control.

"Gross revenues" means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder's network to provide cable service or video service within the incorporated areas of the Town, subject to the specifications of California Public Utilities Code section 5860.

"State franchise holder" or "State Franchisee" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the incorporated limits of the Town.

[*History*: Ord. 669, 7/9/08]

4.08.520 Franchise Fees.

(a) *State Franchise Fees.* Any state franchise holder operating within the incorporated areas of the Town shall pay to the Town a state franchise fee equal to five percent (5%) of gross revenues.

(b) *Payment of Franchise Fees.* The state franchise fee required pursuant to this Subsection (c) shall be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the Town, by check or other means, which shall be agreed to by the Town, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the Town.

(c) *Audits.* The Town may audit the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).

(d) *Late Payments.* In the event a state franchise holder fails to make payments required by this Subsection (c) on or before the due dates specified in this section, the Town shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

(e) *Lease of Town-Owned Network.* In the event a state franchise holder leases access to a network owned by the Town, the Town may set a franchise fee for access to the Town-owned network separate and apart from the franchise fee charged to state franchise holders pursuant to this Subsection (c), which fee shall otherwise be payable in accordance with the procedures established by this Subsection.

[*History*: Ord. 669, 7/9/08]

4.08.530 Customer Service.

(a) *Customer Service Standards.* A state franchise holder shall comply with Sections 53055, 53055.2, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and all other applicable state and federal customer service and consumer protection standards pertaining to the provision of cable service or video service, include any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(b) *Penalties for Violations of Standards.* The Town shall enforce the compliance of state franchisees with respect to the state and federal customer service and consumer protection standards set forth in paragraph 1 of this Subsection (d). The Town will provide a state franchisee with a written notice of any material breaches of applicable customer service or consumer protection standards, and will allow the state franchisee 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the Town:

(1) For the first occurrence of a material breach, a fine of $500 may be imposed for each day the violation remains in effect, not to exceed $1,500 for each violation.

(2) For a second material breach of the same nature within 12 months, a fine of $1,000 may be imposed for each day the violation remains in effect, not to exceed $3,000 for each violation.

(3) For a third material breach of the same nature within 12 months, a fine of $2,500 may be imposed for each day the violation remains in effect, not to exceed $7,500 for each violation.

(c) Any penalties imposed by the Town shall be imposed in a manner consistent with California Public Utilities Code section 5900.

[*History*: ORD. 669, 7/9/08]

4.08.540 Permits And Construction.

(a) *Requirements.* Except as expressly provided in this Section 4.08.500, the provisions of Sections 4.08.260 ("Security Fund"), 4.08.270 ("Construction Requirements - System"), 4.08.280 ("Construction Requirements - Multiple Franchises"), 4.08.290 ("Technical Standards"), 4.08.300 ("Non-compliance with Technical Standards"), 4.08.310 ("Indemnification and Hold Harmless"), and 4.08.320 ("Insurance") shall apply to all work performed by or on behalf of a state franchise holder on any Town public rights-of-way, public property, or Town easement as those terms are defined in the Colma Municipal Code.

(b) *Permits.*

(1) Prior to commencing any work for which a permit is required by Subchapter 5.08 of the Colma Municipal Code, a state franchise holder shall apply for and obtain a permit in accordance with that Subchapter and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of this Subchapter, Subchapter 5.08 and Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act).

(2) The City Engineer shall either approve or deny a state franchise holder's application for any permit required under this Section 4.08.540 within sixty (60) days of receiving a completed permit application from the state franchise holder.

(3) If the City Engineer denies a state franchise holder's application for a permit, the City Engineer shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.

(c) *Appeal.*

(1) A state franchise holder that has been denied a permit by final decision of the City Engineer may appeal the denial to the City Council. Upon receiving a notice of appeal, the City Council shall take one of the following actions:

(A) Affirm the action of the City Engineer without any further hearing; or

(B) Refer the matter back to the City Engineer for further review with or without instructions; or

(C) Set the matter for a de novo hearing before the City Council.

(2) In rendering its decision on the appeal, the City Council shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the City Engineer unless the City Council is itself conducting a public hearing on the matter.

(d) *Notification to Residents Regarding Construction or Maintenance.*

(1) Prior to any construction, rebuild, or upgrade of a cable or video system, a state franchise holder shall establish procedures to notify Town residents in the impacted area of construction schedules and activities. Such notices must be provided in the predominant languages spoken by those persons who work and/or reside in the impacted area. The notices shall be provided to the City Engineer for review and approval no later than twenty (20) days before commencement of construction, rebuild, or upgrade activities.

(2) At a minimum, the notice required in the preceding paragraph shall be provided by the state franchise holder to impacted residents and occupants in the construction area not less than forty-eight (48) hours prior to the planned construction. The state franchise holder shall provide additional notice to the persons described in paragraph (7) of this Section 4.08.540 on the day of construction. The notice may be in the form of door hangers that indicate, at a minimum, the dates and times of construction and the name and telephone number of a state franchise holder contact.

(3) The state franchise holder shall provide notice at least twenty (20) days prior to entering private property or public ways or public easements adjacent to or on such private property, public ways, or public easements, and provide a second notice three (3) days prior to entering such property.

(A) Should there be above ground or underground installations (excluding aerial cable lines utilizing existing poles and cable paths) which will affect the private property, such notice shall be in writing and shall contain specific information regarding any above ground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths) which shall affect the private property.

(B) To the extent practicable, aboveground or underground equipment placed on private property shall be placed at the location requested by the property owner. A state franchise holder shall provide the private property owner with at least twenty (20) days advance written notice of its plans to install such equipment, and shall obtain express written consent, in the form of a recorded easement agreement, from the private property owner before installing its appurtenances. The state franchise holder shall notify the property owner, in writing, that the property owner is not obligated to agree to the placement on their property or to enter into an easement agreement with the state franchise holder. Should property owner notify the state franchise holder of objection to placement of any such above-ground or underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), the state franchise holder shall confer with the Town public works department regarding appropriate location and placement of such appurtenances.

(4) In addition to any other notice of proposed entry required under this Section 4.08.540, a state franchise holder's personnel shall make a reasonable attempt to give personal notice to residents immediately preceding entry on private property or public ways or public easements adjacent to or on such private property.

(e) *Identification Required.* A state franchise holder, its employees, agents, contractors, and subcontractors shall be properly identified as agents of the state franchise holder prior to and during entry on private and public property. Identification shall include the name and telephone number of the state franchise holder on all trucks and vehicles used by installation personnel.

(f) *Restoration of Private and Public Property.* After performance of work, the state franchise holder shall restore such private and public property to a condition equal to or better than its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements upon private or public property shall, at the sole expense of the state franchise holder, be promptly repaired or restored (including replacement of such valuables as shrubbery

and fencing) to the reasonable satisfaction of the property owner, in addition to the furnishing of camouflage plants on public property.

(g) *Reports.* Each state franchise holder, within 60 days after the expiration of each calendar year, shall file a report with the City Engineer, which shall contain a street and highway map or maps of any convenient scale on which shall be plotted the location of the entire transmission and distribution system or systems covered by the report as of the last day of the calendar year, with the system or systems located in Town highways indicated by distinctive coloration or symbols.

[*History*: ORD. 669, 7/9/08]

4.08.550 Emergency Alert.

(a) Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.

(b) To the extent consistent with California Public Utilities Code section 5880, each state franchisee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an emergency override capability to permit the Town to interrupt and cablecast an audio message on all channels simultaneously in the event of a disaster or public emergency. Each state franchisee shall be exempt from all liability for the use of the emergency alert, and the Town shall indemnify and hold each state franchisee harmless from any claims and damages arising out of any such use.

[*History*: ORD. 669, 7/9/08]

4.08.560 Public, Educational and Government Access Channel Capacity, Interconnection, and Signal Carriage.

(a) *PEG Channel Capacity.*

(1) A state franchisee that has been authorized by the California Public Utilities Commission to provide video service in the Town shall designate and activate three PEG channels within three months from the date that the Town requests that the state franchisee designate and activate these PEG channels. However, this three-month period shall be tolled for such a period, and only for such a period, during which the state franchisee's ability to designate or provide such PEG capacity is technically infeasible, as set forth in Sections 5870(a), 5870(c) and 5870(h) of the California Public Utilities Code.

(2) A state franchisee shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the Town or any entity designated by the Town to manage one or more of the PEG channels.

(b) *PEG Support.*

(1) Any state franchise holder operating within the Town shall pay to the Town -- or if directed by the Town, to the Town's designated PEG provider -- a PEG fee equal to one percent (1%) of gross revenues.

(2) The PEG support fee shall be used for PEG purposes that are consistent with state and federal law.

(3) A state franchisee shall remit the PEG support fee to the Town -- or if directed by the Town, to the Town's designated PEG provider -- within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the PEG support fee was calculated.

(4) If a state franchisee fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

(c) *PEG Carriage and Interconnection.*

(1) As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels, shall be capable of carrying a National Television System Committee (NTSC) quality television signal, and shall be carried on the state franchisee's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the Town unless federal law requires the change.

(2) As set forth in Section 5870(h) of the California Public Utilities Code, the holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the Town shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point of interconnection is available,

the state franchisee shall make interconnection available to each PEG channel originator programming a channel in the Town and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

[*History*: Ord. 669, 7/9/08]

4.08.570 Notices.

(a) Each state franchise holder or applicant for a state franchise shall file with the Town a copy of all applications or notices that the state franchise holder or applicant is required to file with the California Public Utilities Commission.

(b) Unless otherwise specified in this section, all notices or other documentation that a state franchise holder is required to provide to the Town under this Section or the California Public Utilities Code shall be provided to both the Town Manager and the Town staff person in charge of cable and telecommunications, or their successors or designees.

[*History*: Ord. 669, 7/9/08]